Harbin Construction, Inc. *and* Local 1234, United Brotherhood of Carpenters and Joiners of America, AFL–CIO. Case 7–CA–36978

August 18, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

Upon a charge filed by the Union on March 14, 1995, the General Counsel of the National Labor Relations Board issued a complaint on April 25, 1995, against Harbin Construction, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On July 17, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On July 19, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated June 2, 1995, granted the Respondent an extension of time until June 16, 1995, to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation with an office and place of business in Detroit, Michigan, has been engaged as a carpentry contractor in the building and construction industry. During the 12-month period ending February 28, 1995, the Respondent, in conducting its business operations, purchased goods and supplies valued in excess of $50,000 from other enterprises within the State of Michigan, each of which other enterprises had received said goods and supplies directly from points located outside the State of Michigan, and provided services valued in excess of $50,000 for other enterprises within the State of Michigan, which other enterprises are directly engaged in interstate commerce. Associated Carpenter Contractors of Michigan (the Association) is and has been at all times material herein, an organization composed of employers, including the Respondent, engaged in the construction industry and which exists, in whole or part, for the purpose of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. During the same 12-month period employer members of the Association have performed services valued in excess of $50,000 outside the State of Michigan and/or provided services valued in excess of $50,000 for enterprises within the State of Michigan, which enterprises, in turn, are directly engaged in interstate commerce; and purchased goods and supplies valued in excess of $50,000 directly from points outside the State of Michigan, and/or purchased goods and supplies valued in excess of $50,000 from enterprises within the State of Michigan, which enterprises in turn purchased said goods and supplies directly from outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

All employees employed by the Respondent who perform residential carpentry work within the geographic jurisdiction of the Union, but excluding guards and supervisors as defined in the Act (the unit) constitute a unit of employees appropriate for the purposes of collective bargaining pursuant to Section 9(b) of the Act.

For many years, the Association and the Union have entered into collective-bargaining agreements, the most recent of which is effective from August 1, 1994, through July 31, 1995 (the Association agreement). About April 26, 1994, the Respondent executed a power of attorney and became a member of the Association. The power of attorney, at all material times, bound the Respondent to the terms and conditions of employment of the Association collective-bargaining agreement with the Union in effect at that time and to new agreements as described above and authorized the

Association to be its collective-bargaining representative.

About April 26, 1994, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into the collective-bargaining agreement with the Union as described above without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. During all relevant times herein, the Union, based on Section 9(a) of the Act, has been the limited exclusive collective-bargaining representative of the employees in the unit.

The Association agreement provides for, inter alia, the remittance by the Respondent of payments into certain fringe benefit trust funds established for the benefit of unit employees of signatory employers to said agreements and the submission of fringe benefit reports to the Union's fringe benefit trust funds. Since about September 14, 1994, the Respondent has unilaterally and without agreement with the Union, failed and refused, and continues to fail and refuse, to apply the terms of the collective-bargaining agreement referred to above to unit employees by its failure to make full and timely fringe benefit fund payments to the Union's fringe benefit trust funds on behalf of all its employees employed in the unit and its failure to submit complete and accurate fringe benefit reports.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the limited exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the Union's fringe benefit trust funds since about September 14, 1994, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1] Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing, since about September 14, 1994, to submit complete and accurate fringe benefit reports, as required by the agreement, we shall order it to do so.

ORDER

The National Labor Relations Board orders that the Respondent, Harbin Construction, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally and without agreement with Local 1234, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, failing or refusing to apply the terms of the collective-bargaining agreement in effect from August 1, 1994, through July 31, 1995, to unit employees by failing to make full and timely fringe benefit fund payments to the Union's fringe benefit trust funds on behalf of all its employees employed in the unit or failing to submit complete and accurate fringe benefit reports. The unit includes the following employees:

> All employees employed by the Respondent who perform residential carpentry work within the geographic jurisdiction of the Union, but excluding guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Honor the terms of the 1994–1995 Association agreement and make whole its unit employees for its failure to do so since about September 14, 1994, in the manner set forth in the remedy section of this decision, and file complete and accurate fringe benefits reports as required by the collective-bargaining agreement in effect from August 1, 1994, through July 31, 1995.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[1] To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Respondent's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

(c) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 18, 1995

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
John C. Truesdale,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT unilaterally and without agreement with Local 1234, United Brotherhood of Carpenters and Joiners of America, AFL–CIO, fail or refuse to apply the terms of the collective-bargaining agreement effective from August 1, 1994, through July 31, 1995, to unit employees by failing to make full and timely fringe benefit fund payments to the Union's fringe benefit trust funds on behalf of all our employees employed in the unit or by failing to submit complete and accurate fringe benefit reports. The unit includes the following employees:

> All employees employed by us who perform residential carpentry work within the geographic jurisdiction of the Union, but excluding guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL honor the terms of the 1994–1995 Association agreement and make whole our unit employees for our failure to do so since about September 14, 1994, with interest, and file complete and accurate fringe benefits reports as required by the collective-bargaining agreement in effect from August 1, 1994, through July 31, 1995.

HARBIN CONSTRUCTION, INC.